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American Institute of Certified Public Accountants. Political & Legislative Affairs Division

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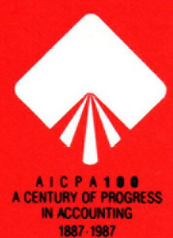
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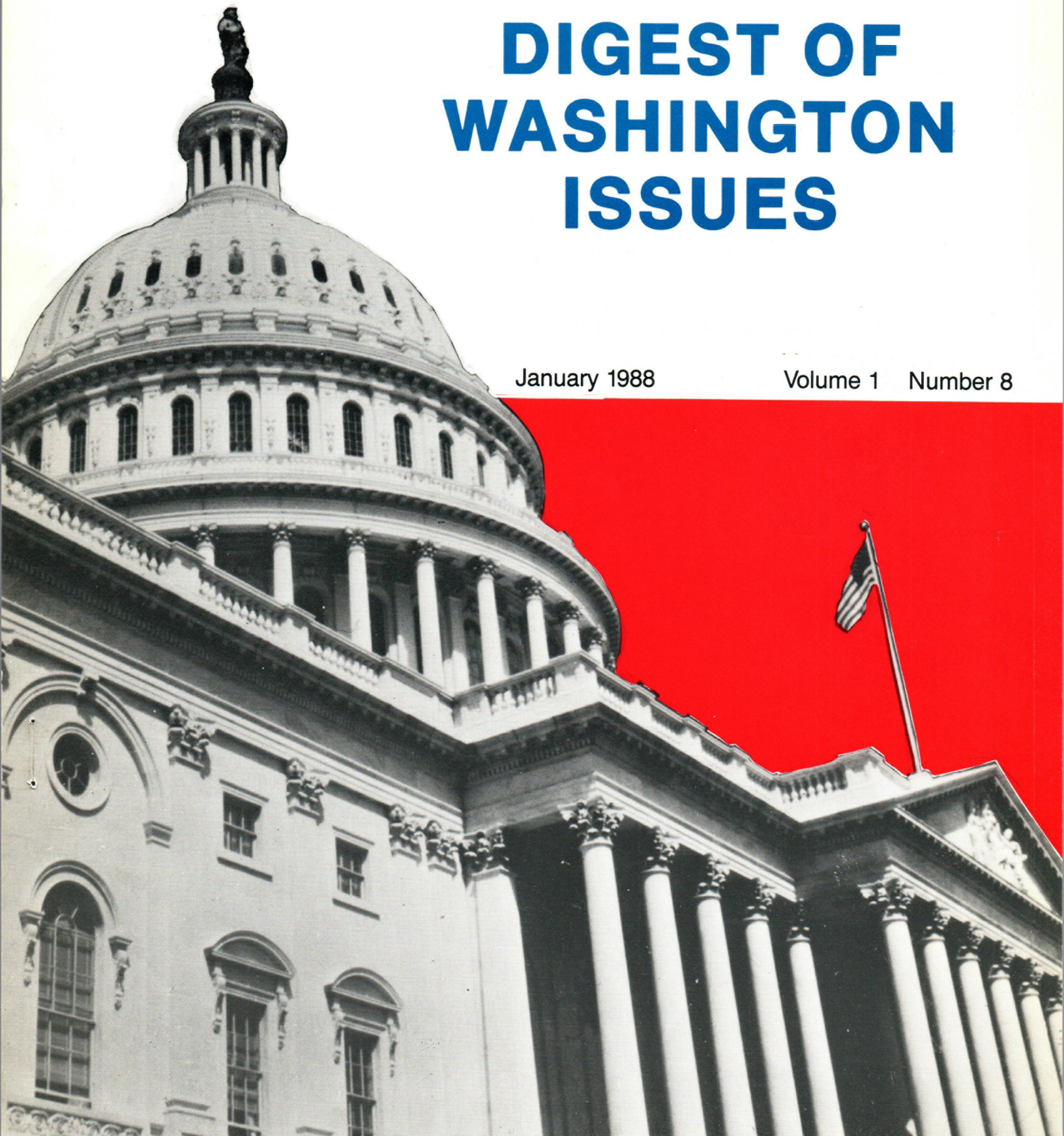
AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS



# DIGEST OF WASHINGTON ISSUES

January 1988

Volume 1 Number 8





## DIGEST OF WASHINGTON ISSUES

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## MODIFICATION OF YEAR-END CONFORMITY PROVISION OF TRA '86 PERMITTING RETENTION OF FISCAL YEARS

### ISSUE

Should Congress approve corrective legislation which would modify the Tax Reform Act of 1986 (TRA '86), to permit most partnerships, S corporations and personal service corporations to adopt a calendar year-end for tax purposes?

### AICPA POSITION

The AICPA supported legislation, approved by Congress and signed by the President in December 1987, which permitted retention or adoption of fiscal years for partnerships, S corporations and personal service corporations.

### BACKGROUND

The TRA '86 contained a stringent, unnecessary and unworkable requirement that abolished fiscal years for most partnerships, S corporations and PSCs.

In January 1987, representatives of the AICPA began working with Senate Finance, House Ways & Means, and the Joint Committee on Taxation members and staff to develop a revenue neutral legislative proposal which would permit continuation of fiscal years.

On July 21, 1987, Senators Max Baucus (D-MT) and John Heinz (R-PA), members of the Finance Committee, introduced corrective legislation, S. 1520, which the AICPA strongly supported. Representative Ronnie Flippo (D-AL), a CPA and member of the Ways and Means Committee, introduced a companion bill, H.R. 2977.

### RECENT DEVELOPMENTS

In late December, tax legislation which included a provision allowing fiscal years for partnerships, S corporations and personal service corporations was passed. This corrective legislation became part of the Revenue Act of 1987 as a result of the year-long efforts of Senator Baucus and Rep. Flippo and many of their colleagues. This successful effort was also a result of the personal involvement of thousands of CPAs throughout the nation who contacted their Senators and Representatives to express their support of S. 1520 and H.R. 2977.

### POSITION OF OTHERS

This legislation was also endorsed by the U.S. Chamber of Commerce and the National Federation of Independent Business.

### JURISDICTION

SENATE - Committee on Finance

HOUSE - Committee on Ways and Means

## RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT (RICO)

### ISSUE

Should the civil provisions of the RICO statute be amended?

### AICPA POSITION

The AICPA supports H.R. 2983, which Representative Rick Boucher (D-VA) introduced on July 22, 1987. The AICPA vigorously opposes S. 1523, which Senator Howard Metzenbaum (D-OH) introduced on the same day. We plan to seek an amendment to Senator Metzenbaum's bill to have it conform with Rep. Boucher's proposal.

### BACKGROUND

RICO is one part of the 1970 Organized Crime Control Act. Congress authorized private persons victimized by a "pattern" of "racketeering activity" to sue for treble damages and attorneys' fees. In describing the kinds of "racketeering activity" that could give rise to such lawsuits, however, Congress included not only murder, arson, extortion, kidnapping, and drug trafficking, but also mail fraud, wire fraud, and fraud in the sale of securities.

Instead of being used as a weapon against organized crime, private civil RICO has become a regular feature of ordinary commercial litigation. RICO cases growing out of securities offerings, corporate failures, and investment disappointments have become almost routine. Many of these cases have included accountants as co-defendants who are charged with participating in an alleged "pattern of racketeering activity."

Early in the 99th Congress, the AICPA decided to take the lead in convincing Congress to cure these abuses. It brought together a coalition representing the securities industry, the life insurance and property and casualty insurance industries, banks and major manufacturers and their trade associations. In addition, the coalition worked together with representatives of major labor unions, led by the AFL-CIO, that also supported major reforms of civil RICO to prevent its growing abuse.

The principal sponsor in the House of the AICPA's preferred solution to the RICO problem was Rep. Boucher. In July of 1985, he introduced a bill that would have limited civil RICO suits to cases in which the defendant had been convicted of a criminal act.

While the Boucher bill garnered widespread support in Congress, consumer groups strongly opposed the legislation and were able to enlist key Chairmen to block the bill's progress. The coalition negotiated a compromise proposal that would have reduced RICO's treble-damage provision to single damages in certain cases.

The AICPA and other groups supported this compromise because it was a substantial improvement over current law. The compromise bill passed the House by a vote of 371 to 28 on October 7, 1986, but failed in the Senate by two votes.

In the wake of the insider trading scandals that have rocked Wall Street, some opposition to an important provision in our compromise bill arose in Congress and among certain elements of the consumer groups with which we had negotiated last year. The provision we support would eliminate multiple damages in RICO suits based on transactions subject to federal or state securities laws. That provision would apply to most cases in which accountants and accounting firms are defendants.

Along with the securities industry, we agreed to a modification of that provision so that a plaintiff could still seek multiple damages in a suit arising from insider trading. Rep. Boucher found this compromise satisfactory, and has introduced legislation similar to the bill passed by the House with this modification.

However, Senator Metzenbaum, who has taken responsibility for RICO reform legislation in the Senate, was not satisfied with our compromise, i.e. allowing multiple damages in a suit arising from insider trading. We negotiated for months with him and his staff, seeking a formulation that would allow for multiple damages in additional circumstances while still providing real relief for RICO defendants. Those negotiations were unsuccessful; Senator Metzenbaum eventually broke them off and introduced a bill that is wholly unacceptable to us.

Under Senator Metzenbaum's bill, a large group of plaintiffs--called "small investors"--can continue to seek multiple damages even if their RICO claim arises from a securities-related transaction. Every RICO securities class action that is brought under current law could still be brought under the Metzenbaum formulation.

In fact, the Metzenbaum proposal is worse than current law for the accounting profession and other defendants in securities litigation. Today, many courts find ways to dismiss RICO claims in securities-related cases because they believe that Congress did not intend for the statute to be used that way. If Senator Metzenbaum's endorsement of that use of the statute is enacted into law, then that judicial hostility will disappear, plaintiffs will be more willing to assert RICO claims, and courts will be less willing to dismiss them.

In October 1987, the Senate Judiciary Committee held a hearing, chaired by Senator Metzenbaum, on RICO reform. Representatives from the AICPA along with the Department of Justice, National Association of Attorneys General, National Association of Manufacturers, Securities Industry Association and the AFL-CIO testified at the hearing.

## RECENT DEVELOPMENTS

No additional Congressional hearings have been held, although we anticipate hearings will be scheduled in 1988.

## POSITION OF OTHERS

There is widespread support for amending civil RICO and for the Boucher bill.

Regarding the Metzenbaum legislation, the Department of Justice recommends the deletion of the "small investor" provision. The business community is deeply divided on the Metzenbaum legislation because of its "small investor" provision. The Securities Industry Association is opposed to the "small investor" provision. Only the National Association of Manufacturers (NAM) has said that it will not support, nor will it oppose, any amendments to the Metzenbaum bill. However, several of NAM's member companies have indicated that they are willing to support our efforts to amend the Metzenbaum legislation.

## JURISDICTION

SENATE - Committee on the Judiciary

HOUSE - Committee on the Judiciary



CONGRESSIONAL OVERSIGHT HEARINGS ON THE ACCOUNTING PROFESSION  
(DINGELL HEARINGS)

ISSUE

Are independent auditors fulfilling their responsibilities relative to audits of publicly owned corporations?

AICPA POSITION

Independent auditors are fulfilling those responsibilities and the profession has taken a number of steps to enhance the effectiveness of independent audits. These include:

- o Strengthening audit quality by expanding the scope and requirements for peer review conducted under the supervision of the Institute's SEC Practice Section and the Public Oversight Board.
- o Revising auditing standards on internal control, fraud and illegal acts, auditors' communications and other "expectation gap issues."
- o Creating the National Commission on Fraudulent Financial Reporting, chaired by former SEC Commissioner James C. Treadway.
- o Recommending to the SEC expanded disclosure requirements when an auditor resigns from an audit engagement, particularly when there are questions about management's integrity.

BACKGROUND

In February 1985, under the chairmanship of Rep. John Dingell (D-MI), the Subcommittee on Oversight and Investigations of the House Energy and Commerce Committee began hearings on the accounting profession. The hearings focused on the effectiveness of independent accountants who audit publicly owned corporations and the performance of the SEC in meeting its responsibilities. In all, 17 day-long sessions were held between 1985 and 1986, and over 100 witnesses testified. There were no hearings held on this issue in the U.S. Senate during 1985-1986.

Three hearings have been conducted by the Oversight and Investigations Subcommittee in the 100th Congress. The hearings held in July 1987 focused on the recommendations of the National Commission on Fraudulent Financial Reporting (Treadway Commission). Witnesses at the first hearing were the members of the Treadway Commission. At the two following hearings, representatives of all the organizations sponsoring the Treadway Commission testified, including the AICPA.

The AICPA testimony, presented by then Board Chairman J. Michael Cook, included an overview of significant recent developments including:

- o The completion of an extensive Auditing Standards Board project resulting in the issuance of 10 proposed Statements on Accounting Standards which, when approved, will (a) clarify the auditor's responsibility for the detection of fraud; (b) communicate more useful information about the nature and results of the audit process, including information about the possibility of business failure; and (c) communicate more effectively with shareholders and creditors who have an interest in, or responsibility for, financial reporting.
- o The AICPA Council's authorization of a membership ballot on the recommendations of the Special Committee on Standards of Professional Conduct for CPAs (Anderson Committee) to restructure and strengthen our Code of Professional Ethics.
- o The establishment of a private sector committee to ensure Treadway Commission recommendations are considered in a timely and an appropriate manner. The Committee of Sponsoring Organizations of the Treadway Commission is comprised of the five organizations that sponsored the Treadway Commission.
- o A report of a special task force of the AICPA on ways to improve disclosures of the risks and uncertainties.

#### RECENT DEVELOPMENTS

We anticipate the Oversight Committee will ask the Securities and Exchange Commission to comment on the Treadway Commission recommendations early in this congressional session.

#### JURISDICTION

SENATE - Committee on Banking, Housing, and Urban Affairs

Securities Subcommittee

HOUSE - Committee on Energy and Commerce

Oversight and Investigations Subcommittee

Telecommunications and Finance Subcommittee

## POSSIBLE SECURITIES LEGISLATION RESULTING FROM THE TREADWAY COMMISSION'S RECOMMENDATIONS

### ISSUE

Should Congress approve legislation to implement certain recommendations of the Treadway Commission?

### AICPA POSITION

The AICPA has not taken a position on the specific Treadway Commission recommendations that may require implementing legislation at this time.

### BACKGROUND

In its final report the National Commission on Fraudulent Financial Reporting (The Treadway Commission) made several recommendations which may require amending our nation's securities laws. The Treadway Commission recommended expanding the SEC's enforcement authority to enable the agency to:

- o bar or suspend officers and directors of publicly held corporations,
- o mandate audit committees composed of independent directors for all publicly held corporations,
- o seek civil money penalties in injunctive proceedings,
- o issue cease and desist orders when it finds a securities law violation, and
- o impose civil money penalties in administrative proceedings including Rule 2(e).

### RECENT DEVELOPMENTS

In November 1987, Rep. John Dingell (D-MI), Chairman of the Subcommittee on Oversight and Investigations of the House Energy and Commerce Committee, addressed the Corporate Accounting and Financial Reporting Institute. In his comments Chairman Dingell suggested that some of the recommendations of the Treadway Commission may be implemented in legislation. Rep. Dingell remarked that "Congress has a responsibility to move forward on the good ideas of the Treadway Commission that will require legislation."

Rep. Dingell has asked his staff "to identify specific proposals for change that should be included in potential legislation." It is expected that the subcommittee will draft a legislative package early this year.

**JURISDICTION**

**Senate - Committee on Banking, Housing and Urban Affairs  
Securities Subcommittee**

**House - Committee on Energy and Commerce  
Telecommunications and Finance Subcommittee**

## TAXPAYERS' BILL OF RIGHTS ACT

### ISSUE

Should the Congress enact the Taxpayers' Bill of Rights Act?

### AICPA POSITION

The AICPA supports the concept of legislation to enact a taxpayers' bill of rights. In September 1987, the AICPA's Tax Division Executive Committee voted to support the enactment of legislation designed to promote and protect taxpayers' rights.

### BACKGROUND

Since the beginning of the 100th Congress, a number of legislative proposals seeking to "offer sufficient protections for honest taxpayers" have been introduced in the Senate and the House of Representatives. The AICPA's Tax Division submitted comments to the Senate Finance Committee on a measure introduced by Senator David Pryor (D-AR) during the first session of the 100th Congress.

Senator Pryor has revised his original bill. The revised Taxpayers' Bill of Rights, S. 1774, requires IRS agents to explain to taxpayers their rights in civil proceedings as well as taxpayers' exposure, should the initial civil proceeding lead to a subsequent criminal proceeding. This is a change from the earlier Pryor bill which would have required IRS agents to read taxpayers their rights in Miranda-like fashion. The revised Pryor measure also requires the IRS to support and explain the penalties it assesses against taxpayers, establishes a new Assistant Commissioner of Taxpayer Services, and corrects some technical problems brought to light in meetings with AICPA representatives and others.

### RECENT DEVELOPMENTS

The Taxpayers' Bill of Rights provisions were not included in tax legislation enacted in 1987. It is anticipated that Senator Pryor's measure, as well as an identical House bill, H.R. 3470, introduced by Rep. Ronnie Flippo (D-AL), will be considered in 1988.

### POSITION OF OTHERS

The IRS supports safeguarding taxpayers' rights but does not believe the solutions proposed by the present legislative measures appropriately address the problems they are intended to solve. They believe administrative remedies would be more appropriate than legislation.



**JURISDICTION**

**SENATE - Committee on Finance**

**HOUSE - Committee on Ways and Means**

CONGRESSIONAL HEARINGS ON THE QUALITY OF AUDITS OF FEDERAL  
FINANCIAL ASSISTANCE (BROOKS HEARINGS)

ISSUE

What can be done to improve the quality of audits of federal financial assistance performed by CPAs?

AICPA POSITION

The AICPA recognized that this is an urgent problem and, among other steps, formed a Task Force to develop ways to improve the quality of audits of governmental units. The Task Force's final report contained 25 recommendations for improving the quality of such audits.

A special Implementation Committee consisting of representatives of the AICPA and other groups with responsibility for carrying out the recommendations has been established.

Other actions that have been taken by the Institute include publication of a revised audit guide on audits of state and local governmental units, presentation of training programs throughout the country on the Single Audit Act, and expansion of the peer review program of the Division for CPA Firms to include examination of governmental units.

BACKGROUND

The Legislation and National Security Subcommittee of the House Committee on Government Operations, under the chairmanship of Representative Jack Brooks (D-TX), investigated the quality of audits of federal grants to state and local governments and to nonprofit organizations. Hearings began in November 1985. A March 1986 GAO study found that 34 percent of the governmental audits performed by CPAs did not satisfactorily comply with applicable standards. The two biggest problems identified were insufficient audit work in testing compliance with governmental laws and regulations and in evaluating internal accounting controls over federal expenditures.

In October 1986, the Brooks Committee released a report to Congress, "Substandard CPA Audits of Federal Financial Assistance Funds: The Public Accounting Profession is Failing the Taxpayers," concluding that improvements must be made in the quality of CPA audits of federal financial assistance funds.

The basic recommendations in the report are:

- o Action should be taken to assure that CPAs who perform this work are properly trained in governmental auditing.

- o The State Boards of Accountancy and the AICPA should impose strict sanctions on CPAs who perform substandard audits.
- o The Inspectors General should strengthen their quality review systems.
- o The GAO should revise its Standards for Audit of Governmental Organizations, Programs, Activities, and Functions (the "Yellow Book") to include a specified amount of CPE in governmental auditing, as well as a requirement that CPA firms auditing federal financial assistance funds undergo periodic peer reviews.

Rep. Brooks has concluded that there is no doubt that there are serious problems in the quality of governmental audits and "if the accountants can't solve them, somebody will." He also indicated that he plans to continue hearings to monitor improvements.

In September 1987, the GAO released the results of the third phase of its review of the quality of audits performed by CPAs of governmental units. The GAO evaluated whether there was a relationship between the procurement process and the quality of the audits that resulted.

The GAO found that entities are almost three times as likely to receive an audit that meets professional standards when they have an effective procurement process. The report identified "four critical attributes" that provide a framework that should substantially improve the procedures to obtain, as well as ultimately the quality of, auditor work. These attributes are:

- o competition
- o solicitation
- o technical evaluation
- o written agreement

#### RECENT DEVELOPMENTS

Many of the recommendations of the task force have been or are in the process of being implemented. For example, the Auditing Standards Board is about to issue for public comment a proposed SAS on compliance auditing.

#### POSITION OF OTHERS

The GAO, the federal Inspectors General, the State Auditors, the State Boards of Accountancy, State Societies and other organizations are all working together to develop and implement ways to improve the quality of CPA audits of federal financial assistance funds.

**JURISDICTION**

**SENATE - Committee on Governmental Affairs**

**HOUSE - Committee on Government Operations**

**Legislation and National Security Subcommittee**

## VARIOUS LEGISLATIVE PROPOSALS IN CONFLICT WITH GAAP

### ISSUE

Should the Congress legislate accounting standards that conflict with GAAP?

### AICPA POSITION

The AICPA believes that accounting standards used in the preparation of financial statements should be set in the private sector and not by legislation. Our concern is that accounting principles that are inconsistent with generally accepted accounting principles could erode public confidence in published financial reports. Such a loss of confidence may cause severe repercussions in our capital markets.

### BACKGROUND

In the private sector, the Financial Accounting Standards Board (FASB) establishes standards for financial accounting and reporting. We acknowledge that Congress and regulatory agencies have the authority to set accounting standards for regulatory reporting purposes; however, we are concerned that differences between regulatory accounting principles (RAP) and generally accepted accounting principles (GAAP) could be confusing to the users of financial statements. Furthermore, past attempts to improve the financial conditions of troubled institutions by allowing the deferral and amortization of loan losses under RAP have failed to accomplish the desired objective, and may have, in fact, increased the potential loss.

In the 100th Congress, various legislation has been introduced which includes language proposing accounting standards inconsistent with GAAP on issues ranging from banking to farming.

### RECENT DEVELOPMENTS

Recent developments indicate that Congress may be adopting GAAP. For example, Congress has passed Federal Savings and Loan Insurance Corporation reauthorization legislation that would require savings and loan institutions to conform to GAAP by the year 1994.

### POSITION OF OTHERS

The FASB, GAO, and the staff of the SEC generally oppose legislation establishing accounting standards that are inconsistent with GAAP.



## JURISDICTION

Referral to a Congressional committee is determined by subject matter. For example, legislation regarding the Farm Credit System, which included accounting provisions, was referred to House and Senate agriculture committees. However, if legislation were introduced regarding oil and gas accounting, it would be referred to the House and Senate energy committees.

## FEDERAL FINANCIAL MANAGEMENT REFORM LEGISLATION

### ISSUE

Should Congress enact legislation to improve federal financial management?

### AICPA POSITION

The AICPA is concerned about the Federal Government's lack of effective financial management systems and accountability and it urges the Congress and the President to work together to correct this situation.

### BACKGROUND

The AICPA formed the Task Force on Improving Federal Financial Management to develop a program and strategy to assist the Congress and the Administration in improving federal financial management.

During the first session of the 100th Congress, legislation creating a chief financial officer (CFO) position for the U.S. government was introduced in the Senate and U.S. House of Representatives by Senator John Glenn (D-OH) and Representative Joseph J. DioGuardi (R-NY) respectively.

S. 1529, the Federal Financial Management Reform Act, was introduced by Senator Glenn, July 22, 1987. H.R. 3142, the Federal Financial Management Improvement and Public Accountability Act, was introduced by Representative DioGuardi on August 6, 1987. A comparison of both bills follows.

The Glenn bill would establish the position of an Under Secretary for Financial Management in the Department of the Treasury. A CFO position would be established in each cabinet department, as well as various other departments and agencies.

S. 1529 would also require the Under Secretary to develop a methodology for estimating executive agency assets and liabilities. The bill does not mandate financial statements, but if financial statements were to become part of the Under Secretary's plan, the General Accounting Office (GAO) or other independent auditor is given primary audit responsibility.

Senator Glenn said enactment of such legislation is necessary because there is no one person responsible for coordinating financial management efforts in the federal government; because the Congress must make program funding decisions without accurate, timely and complete information; and because millions of public dollars are lost or unaccounted for as a result of poor financial management.

The measure was referred to the Senate Governmental Affairs Committee, of which Senator Glenn is chairman. A hearing on the legislation was held July 23, 1987.

The DioGuardi bill would create an Office of the Chief Financial Officer of the United States, who would be appointed for a ten-year term, in the Executive Office of the President.

An Assistant Secretary for Financial Management position would be established in each cabinet department and an Office of the Controller in each executive agency.

The legislation was referred to the House Government Operations Committee, on which Rep. DioGuardi serves. No hearings are scheduled at this time.

#### RECENT DEVELOPMENTS

The AICPA Board of Directors at its December meeting authorized the Government Affairs Committee to communicate to the Congress and the Administration the Institute's support of legislative and administrative efforts to improve federal financial management.

#### POSITION OF OTHERS

The GAO, the National Association of State Auditors, Comptrollers and Treasurers, and the Association of Government Accountants generally support legislation to improve federal financial management.

#### JURISDICTION

Senate - Committee on Governmental Affairs

House - Committee on Government Operations

## GOVERNMENT CONTRACTOR PROFITS INFORMATION REPORTS

### ISSUE

Should Congress require government contractors to submit profits information reports?

### AICPA POSITION

The AICPA is "not convinced" that a legislatively-mandated profit reporting system will be cost-effective. We are opposed to a specific provision in legislation introduced by Representative Charles Bennett (D-FL) and Senator William Proxmire (D-WI) which allows the federal agencies access to accountants' workpapers. We believe engagement working papers are the property of the independent accountant and subject to the ethical limitations relating to the confidential relationship with clients.

### BACKGROUND

Profits received by government contractors, and particularly defense contractors, have been the focus of media attention, numerous government studies and Congressional hearings. In December 1986, at the request of House Government Operations Committee Chairman Jack Brooks (D-TX), the Government Accounting Office (GAO) examined the Department Of Defense's (DOD) most recent profit study and concluded that defense contracting actually was 35 percent more profitable than commercial manufacturing from 1970 to 1979, and 120 percent more profitable from 1980 to 1983, rather than approximately equal, as the DOD had found. The GAO recommended that Congress establish a profitability reporting program and periodic profit studies to help assure fair and reasonable profit in the negotiation of Government contracts. In January 1987, the AICPA forwarded comments to the GAO relating to the independent accountant's role in the agency's draft legislation.

In August 1987, House Armed Services Committee member Rep. Bennett introduced the "Defense Contractor Profits Review Act," H.R. 3134. The Bennett bill requires contractors with \$100 million in annual negotiated contracts with the Departments of Defense, Army, Air Force, Navy, the National Aeronautics and Space Administration or the Coast Guard, to submit a profits information report to the Defense Contract Audit Agency (DCAA). The profits report would be submitted four months after the contractor's annual financial reporting period ends and its reliability would be reported on by an independent certified public accountant. The information would be submitted in a manner that distinguishes between the contractor's government contracts and the contractor's other business. The bill grants the agency head and the DCAA "access to all papers, documents and records" of the independent CPA relating to the profits

information report. The legislation requires the appropriate agency head to review the profits reports submitted to DCAA to determine if a contractor has made excessive profits on past contracts. Currently, there are no hearings scheduled on the Bennett bill.

In the Senate, similar legislation, entitled the "Cost Accounting Standards Amendments Act of 1987," S. 852, was introduced by Senator Proxmire in March 1987. The Proxmire bill requires that contractors having \$50 million in annual government contracts submit a profits report to the Administrator of the Office of Federal Procurement Policy (OFPP) containing information similar to that outlined in H.R. 3134. The Senate bill requires that an independent CPA "attest to the information furnished" in the profits report, and grants the OFPP head access to the independent CPA's records relating to that report. Additionally, S. 852 reestablishes the Cost Accounting Standards Board (CASB) within the OFPP and creates a Cost Accounting and Profits Reports Advisory Council to be headed by the Comptroller General. The legislation is not the subject of any scheduled hearings.

In September 1987, Rep. Brooks introduced legislation entitled the "Office of Federal Procurement Policy Act Amendments of 1987," H.R. 3345. The Brooks bill contains a provision requiring the Administrator of the OFPP to conduct a study "to develop a consistent methodology which executive agencies should use for measuring the profits earned by government contractors on procurements, other than procurements where the price is based on adequate price competition or on established catalog or market prices of commercial items sold in substantial quantities to the general public." The legislation also would reestablish the CASB and place it within the OFPP and would create a Federal Acquisition Regulatory Council, also to be within the OFPP.

Unlike S. 852 and H.R. 3134, Rep. Brooks' legislation would not require defense contractors to submit a profits information report, nor would the bill require CPA attestation of contractor data or provide access to CPA workpapers. The House Government Operations Committee, which Rep. Brooks chairs, marked up and reported out H.R. 3345 four days after introduction. The bill has not yet been scheduled for a vote by members of the House.

#### RECENT DEVELOPMENTS

None

#### POSITION OF OTHERS

The Department of Defense generally disagreed with the findings in the GAO report. Regarding GAO's recommendation of legislation to create a profitability reporting program, DOD stated there is no convincing evidence to support such a program. The Financial Executives Institute's Committee on Government Business is



opposed to the Proxmire and Bennett measures as introduced. The Aerospace Industries Association supports the development of a uniform methodology for computing and reporting profit data for government contracts, yet is opposed to reporting requirements that compare profit data on government and commercial contracts.

JURISDICTION

SENATE - Committee on Government Affairs

HOUSE - Committee on Armed Services  
Committee on Government Operations

## THE FINANCIAL FRAUD DETECTION AND DISCLOSURE ACT (THE WYDEN BILL)

### ISSUE

Should Congress enact the "Financial Fraud Detection and Disclosure Act?"

### AICPA POSITION

The AICPA opposes such legislation for the following reasons:

- o The responsibility for dealing with fraud and illegal acts, including the responsibility to report such matters to the appropriate regulators, is that of the company's board of directors and audit committee. The Wyden bill would inappropriately shift that responsibility to the independent auditor.
- o The bill would substitute a system of governmental surveillance and supervision of corporate activities for that which has traditionally been exercised by corporate directors elected by the entities' shareholders.
- o The bill would result in the forced enlistment of the accounting profession in the work of every federal, state, and local regulatory body and enforcement agency. This bill would convert the "public's watchdog" into the "government's bloodhound."
- o The bill would actually diminish -- not increase -- the effectiveness of independent audits. A healthy professional skepticism is essential to the conduct of an audit. However, the Wyden bill would force the auditor into a direct adversarial relationship with the company being examined, inhibiting frank communication necessary for an effective audit.
- o The bill, if enacted, would add greatly to the costs of audits without apparent corresponding benefit.

### BACKGROUND

During the 99th Congress, Representative Ron Wyden (D-OR) introduced H.R. 4886, "Financial Fraud Detection and Disclosure Act of 1986." The bill would have required, among other provisions, auditors of public companies to:

- o Detect, without regard to materiality, any actual or suspected illegal or irregular activity by any director, officer, employee, agent, or other person associated with the audited entity.

- o Report publicly and to applicable federal, state, or local regulatory or enforcement agencies all instances of actual or suspected illegal or irregular activities.
- o Evaluate and report publicly on the audited entity's system of internal administrative and accounting controls.

A revised version of the Wyden bill was later introduced reflecting two major changes. First, it included the notion of materiality, although the bill's discussion of materiality was much broader than financial statement materiality. Second, the primary burden for reporting irregularities and illegal acts to enforcement and regulatory agencies was placed on the client. However, the auditor would still have independent reporting responsibilities that are inappropriate to the auditor's function. The 99th Congress adjourned without taking any action on the proposed legislation.

#### RECENT DEVELOPMENTS

**The legislation had not been reintroduced during the first session of the 100th Congress.**

#### POSITION OF OTHERS

Currently, there is little, if any, support for such legislation from the SEC, the GAO, and the business community.

#### JURISDICTION

SENATE - Committee on Banking, Housing and Urban Affairs

Securities Subcommittee

HOUSE - Committee on Energy and Commerce

Oversight and Investigations Subcommittee

Telecommunications and Finance Subcommittee

## DISCLOSURE OF TAX RETURN INFORMATION (BYRON BILL)

### ISSUE

Should tax return preparers be prohibited from transferring client information when selling their practice, without prior approval from the taxpayer?

### AICPA POSITION

The AICPA Code of Professional Ethics does not specifically address the confidentiality of client tax return information where a "sale" of a practice has occurred. Although the AICPA has not taken a formal position on legislation introduced in Congress by Representative Beverly Byron (D-MD), we are in general agreement with the concept propounded by the bill.

### BACKGROUND

In February 1987, Rep. Byron introduced legislation, H.R. 1196, intended to prohibit the transfer of returns and return information by tax return preparers in conjunction with the sale of their practice, unless the taxpayer consents to the transfer. We have recommended several changes to this legislation:

- o Negative Consent -- H.R. 1196 requires the written consent of a taxpayer prior to transfer of tax related information in conjunction with a sale of the preparer's practice. We suggest that the legislation be amended so that when written notification of the transfer is provided to the taxpayer, the absence of a response by the taxpayer will be deemed consent to the transfer.
- o Definition of "Sale" -- In order to eliminate confusion, we suggest that the term "sale" be defined so as not to include a business merger.
- o Obligation to Secure Consent -- H.R. 1196 does not indicate who is responsible for securing the client's consent. We believe the bill should be amended to clearly state that the seller of the practice has the obligation and liability for notifying the taxpayer concerning the future sale.
- o Penalties -- H.R. 1196 provides a criminal penalty of up to one year in prison and/or a fine of not more than \$1,000 for a violation of the measure. We believe the imposition of a criminal sanction to be too harsh a penalty and suggest retaining only the fine portion of the penalty for a violation.
- o Disclosure of Lists -- Current regulations under IRC 7216 provide that any tax return preparer may compile a list

containing the names and addresses of taxpayers whose returns he has prepared or processed, and may transfer that list without taxpayer consent, in conjunction with the sale or other disposition of the tax return business. As written, H.R. 1196 appears to prohibit the transfer or other disclosure of such a list absent consent by each client. We recommend that the legislation be amended to conform to current regulations.

Currently, there is no similar legislation in the U.S. Senate. Although H.R. 1196 was originally introduced with no co-sponsors, at present 32 representatives have become co-sponsors of the Byron bill, indicating growing bi-partisan support for the measure. No hearings have been held on H.R. 1196.

#### POSITION OF OTHERS

None identified at this time.

#### JURISDICTION

Senate - Committee on Finance

House - Committee on Ways and Means



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